

Docket: A-1663

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: /
Robert Johnson et al. /
US Serial No.: 09/855,403 / Group Art: 3761
Filed: 5/15/2001 / Examiner: Glenn K. Dawson
Title: AEROSOL ENHANCEMENT /
DEVICE /

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SEP 22 2003

CERTIFICATE OF FACSIMILE TRANSMITTAL

I hereby certify that this correspondence is being facsimile transmitted to facsimile telephone number 703-872-9302 on Friday, September 19, 2003.

Date: 9/19/03Signed: Donald E. Stout

Donald E. Stout, Reg. No. 34,493

OFFICIAL**PETITION TO HOLD RESPONSE TIMELY BASED ON FAILURE TO RECEIVE****OFFICE ACTION**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

On March 6, 2003, Applicants submitted a response, including amendments, to an office action issued on November 6, 2002 in connection with the subject application, via facsimile. Nothing further was received from the PTO, and on September 8, 2003, the matter came up on the docket of the undersigned for follow-up. A review of the PTO PAIR system revealed the apparent issuance of an office action on 5/16/03, and a call was immediately placed to Examiner Dawson to determine the actual status of the application. Applicants gratefully acknowledge Examiner Dawson's immediate and courteous response in providing another copy of the office action by facsimile.

This petition is styled in accordance with the type outlined MPEP 711.03(c) under subsection II. (Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action), although the application has not technically been held abandoned yet. Clearly, it is *de facto* abandoned at present, barring payment of exorbitant extension fees, and the purpose of this petition is to establish that the May 16, 2003 office action, as originally mailed, was not received by Applicants, and thus, no extension fees are required.

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To that end, as provided by the holding of *Delgar v. Schulyer*, the undersigned hereby asserts that the May 16, 2003 office action was not received until re-faxed by the Examiner on September 17, 2003. I have searched the file jacket and docket records to establish that the office communication was not received. A copy of the docket record (in duplicate, since we double-docket) where the nonreceived office communication would have been entered had it been received and docketed (i.e. June 16, 2003, the ostensible due date), is attached to evidence nonreceipt. Additionally, our office maintains logs for each attorney of all incoming correspondence from the U.S. Patent & Trademark Office, and a copy of that log for the matters assigned to the undersigned is attached for the period between April 21, 2003 and June 16, 2003. As can be seen, the office action at issue was never logged as being received.

Accordingly, the undersigned respectfully petitions the PTO to consider the office action of May 16, 2003 to have not been received by the undersigned, and to regard the fax date of September 17, 2003 as the new mailing date for the office action. Thus, the accompanying response to said office action should be regarded as timely, and no extension fees should be due.

Please charge any fees necessary in connection with this petition or the accompanying response to Deposit Account No. 13-5135.

Respectfully submitted,



Donald E. Stout
Attorney for Applicant; Reg. No. 34,493

September 19, 2003
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Due Date List By Date

Due Date	Action Due	Client-Matter #/SubCase	Status	App Number	App Date	Attys
Officer	Action Type	Country	Client	Pat Number	Iss Date	
15-Jun-2003	Foreign Filing 4 Mo. Reminder	DOBER-D-3063 /	Published	10/270,905	15-Oct-2002	FJU
Reminder	Foreign Filing	United States of America	Dober of Glenwood Division			
Title: CONTROLLED RELEASE OF OXYGEN SCAVENGERS IN COOLING SYSTEMS						
15-Jun-2003	Foreign Filing 2 Mo. Reminder	ONDA-ONDAT-024 /	Pending	10/219,969	15-Aug-2002	RDB
Reminder	Foreign Filing	United States of America	ONDA TUECINO			
Title: APNEA PREVENTION GEAR						
15-Jun-2003	Rec Due in 2 Months	TRAFF-A-1586 / 1	Pending	10/233,960	03-Sep-2002	DES
Reminder	US-Allowance	United States of America	Traffix Devices, Inc.			
Title: IMPROVED INERTIAL BARRIER MODULE						
15-Jun-2003	US-3 Month Office Action	VITRT-VITRT-009 / 2	Pending	10/215,680	09-Aug-2002	RDB
Due Date	US-3 Month Office Action	United States of America	Vitreo-Retinal Technologies, Inc.			
Title: AGENTS FOR INTRAVITREAL ADMINISTRATION TO TREAT OR PREVENT DISORDERS OF THE EYE						
16-Jun-2003	US-Restriction	AMO-D-2722 / 5	Published	10/077,615	15-Feb-2002	FJU
Due Date	US-Restriction	United States of America	Advanced Medical Optics			
Title: IOL INSERTION APPARATUS AND METHOD FOR MAKING AND USING SAME						
16-Jun-2003	US-Restriction	BOBIN-A-1134 /	Pending	127,250	10-Jun-1997	DES
Reminder	Foreign Office Action	Israel	The Boeing Company			
Title: GUN BARREL SHROUding SYSTEM						

Due Date Indicator	Action Due Action Type	Client-Matter #/SubCase Country	Status Client Client Ref	App Number Pat Number	App Date Iss Date	Attys
16-Jun-2003 Due Date	IDS/Follow Up # pulled file. re-docket 1 mo. gave to ps. 6/19 - pulled file. gave to phone w/ note	INOVT-INOVT-003 / 1 United States of America	Pending Innovent, LLC	10/273,379	16-Oct-2002	RDB
16-Jun-2003 Due Date	2 Weeks Unit Due. US-3 Month Office Action 6/19 - pulled file. gave to phone w/ note	LABEL-A-1334 / 1 United States of America	Published Label-Airc, Inc.	10/096,051	11-Mar-2002	DES
16-Jun-2003 Reminder	Foreign Filing 2 Mo. Reminder Foreign Filing	MCRNX-P910192 / United States of America	Pending Macronix International Co., Ltd.	60/403,964	16-Aug-2002	KRM
16-Jun-2003 Due Date	Due Date will go out 6/16 per PS done 6/16	ONDA-ONDAT-019 / United States of America	Published ONDA TECHN	10/027,136	26-Dec-2001	RDB
16-Jun-2003 Due Date	Receipt of Written Report/TPR... called RCT Help - email being sent to examiner re-docket 1 mo.	SDSU-D-2826CIP / Patent Cooperation Treaty	Pending SDSU FOUNDATION	US02/04232	12-Feb-2002	FJU
17-Jun-2003 Final	US-3 Month Office Action US-3 Month Office Action US-3 Month Office Action	ALLER-D-2875 / 1 United States of America	Pending Allergan, Inc. 17329(AP)	09/625,098	25-Jul-2000	FJU GSH KDY

June 2003

Docket Don Stout

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2 A11481/MF=DUE D1015/Status8&15	3	4 A1905p/US&PCT=1yr TM1793/SoU=6mo:due	5	6 A1270/MFtr A1397MY/ReqExam=1moDUE A1624EP/ReqExam:due	7
8	9 3215-4046ep/PofA A1501com/OA1moExt. TM11089/SignedDocs	10 A1134jp/ReqExm Marie's Birthday '02	11 A1624/RecAssign	12 A1729PCT/NatCh2Ltr A1838com/OA=3mo:DUE D2074jp/MFtr	13 2224-02au/NomAcpl-1moExt \$ A1518UK/Response=DUE D2485/ClientResp=DUE	14
15	16 A1719ep/OrigPoA:Due	17 A1518div/Stat=1yr A1926p/App-US&PCT D2074SKom/MF=due	18 A1062/MF-tr=7y A1752cip2JP-JD=2mo ABICP:001A/MF-tr TM11790/SoU-4mo	19 8494-01/OA-3mo:Due	20 3215-4046ca/OA=1mo:due A1079cip5IL/response A1289/MFS:due D2581div/MF\$tr TM11928/1yrStat	21
22	23	24 A1742/Status	25 A1323ea/ReqExam:due A1624cipPCT/MO=DUE A1674/OA=3mo:DUE	26 TM11851/Stat=1yr	27 A1518div/OA=3mo:DUE TM1590/STAT=Sec8	28
29	30 A1514pcu/NatCh2:DUE A1663ep/annuity:due					

July

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May

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25	26	27	28	29	30	31

9/18/2003

Rec'd Date	Docket	Serial Number	Correspondence
21	A-1663il	154587	Power of Attorney
22	A-1624ep	00916080.5	Supplementary European Search Report
23	A-1663PCT	US01/17689	IPER
23	A-1693	09/876,260 - 6,547,800	original patent
25	A1011DivCon	10/352,466	filing receipt
25	A-1663BR	PI 0113607-0	Confirmation filed PoA; Assignment; & info
28	4025ep	96 93 1602.5	Office Action
28	A-1656pct	PCT/US01/21905	Written Opinion - FILE ABANDONED 1/03
28	8388.33	5,958,167	Maintenance Fee Reminder
28	A-1349ep	99945406.9	Communication from Assoc.
28	TM-1799	2,708,753	Original Registration
29	A-1704	09/876,341	OAF
29	A-1693con	10/396,886	Postcard
29	A-1529 con	10/413,074	Postcard
29	A-1911p	60/460,997	Postcard
29	A-1624cipPCT	PCT/US01/18560	Written Opinion
29	A-1624ep	00916080.5	Communication
30	A-1663za	2003/2350	Filing Receipt
May			
2	TMi-1703	76/190,843	Notice of Acceptance of Statement of Use

Rec'd Date	Docket	Serial Number	Correspondence
5	A-1610pct	PCT/US01/28190	Receipt of Demand IPEA
5	TM-1689	76/197,963	Office Action
5	TM-1892	78/173,147	Notice of Publication
5	TM-1741	78/173,284	Office Action
5	A-1518fr	0015907	Communication letter
5	A-1791pct	PCT/US02/28209	Receipt of Demand IPEA
5	TM-1814	2,699,831	Notice of Opposition (error)
5	A-1769	09/918,297	Notice of Allowance
5	A-1079cipAU	80526/98	Renewal notice
5	A-1624 au	37243/00	Office Action
6	A-1804au	91034/01	Communication from Assoc - Req. Exam
6	A1849	10/308,733	Assignment
6	A-1630	09/799,461	Notice of Abandonment
7	A-1559	09/608,234	OAF
9	TM-1895	78/175,173	OA
9	A-1864	10/161,915 - 6,565,037	Issue Notification
9	A-1663ca	2,420,509	Filing Receipt
9	A-1716hu	P9800415	Amendment
9	TM-1596	1,208,222	Notice of Recordation
9	1208-003	5,612,374	Postcard

Rec'd Date	Docket	Serial Number	Correspondence
12	D-2090switz	328,735	Renewal
12	A-1583	09/479,393	Notice of Allowance
12	SM-1919	76/510,432	Postcard
12	A-1629	09/603,163	Office Action
12	A-1628	09/595,450	Office Action
12	A-1669cip	PCT/US02/15053	Receipt of Chapter 2 Demand
12	A1713	09/898,398	Notice of Publication of Application
13	A-1717ep	96 915848.4	Communication
13	A-1766pct	PCT/US02/22889	Int'l. Search Report
14	A-1804ep	01 971109.2	Communication
15	A-1584	09/453,664	Issue Notification
16	A1514	09/999,700	Office Action
19	A-1663jp	2002-522773	Translation
19	A-1874ep	201079	Communication
19	A-1769pct	PCT/US02/24038	IPER
19	A-1916p	60/455,843	Filing Receipt
19	A-1676	10/035,920	Issue Notification
19	A-1721ep	96 924696.6-2308	Response to OA
19	A-1624ca	2,363,567	Notice of Abandonment
19	A-1079cipAU	80526/98	ISR
19	A-1586con	10/233,960	Notice of Allowance

Rec'd Date	Docket	Serial Number	Correspondence
20	A-1656con	10/431,621	Post card
20	A-1756pct	PCT/US02/38632	Int'l. Search Report
21	A-1624cipPCT	PCT/US01/18560	Info Concerning Elected Offices Notified of their Election
21	A-1789PCT	PCT/US02/24028	Info Concerning Elected Offices Notified of their Election
21	A-1627cip	09/923,782	Notice of Allowance
21	A-1721ep	96 924696.6	Communication
22	TM-1107	74/734646 - 2,117,263	Notice of Acceptance and Acknowledgement
22	A-1597con2	10/262,420	Granted Petition
23	A-1789	09/918,299	OAF
27	SM-1919	76/510,432	Filing Receipt
27	A-1323ca	2,294,020	Confirmation
27	A-1495	09/456,024	Notice of Allowance
27	A-1447	09/339,053	OA
27	A-1514PCT	PCT/US02/34729	International App. Published
27	A-1915p	60/455,819	Filing Receipt
27	A-1514	09/999,700	Notice of Publication
27	3215-4043ep	1 015 325	Australian Published App
27	A-1148il	126561	Confirmation ltr of fees paid
27	A1864	10/161,915 - 6,565,037	Original Patent
28	A-1408	00107796.1	Communication
29	A-1079jp	8-536682	Reminder-Req. Exam

Rec'd Date	Docket	Serial Number	Correspondence
29	A-1148il	126561	Renewal Certificate
29	A-1335ep	98 938457.3	Response to Exam Report
30	A1771PCT	PCT/US02/24034	Info of Elected Offices Notified of Their Election
30	A1791PCT	PCT/US02/28209	Info of Elected Offices Notified of Their Election
30	A1270CA	2,294,316	Notice of Abandonment
June			
2	A-1766pct	PCT/US02/22889	Demand Receipt
2	A-1442cip	10/289,708	Notice of Publication
2	8388.45p	09/400,135	Issue Notification
2	TMi-1897	78/188,193	OA
2	A-1160ep	9 791 1700.9	Comm - Translations needed
2	A-1079cip5 ca	2,333,535	Communication
2	8494.01p	09/779,901	OA
2	A-1134il	127250	OA
2	A-1344	5,910,055	Maintenance Fee Stmt.
2	A-1716ep	9 6904643.2-2201	Communication
2	A-1584	09/453,664 - 6,569,067	Original Patent
5	A-1663ep	1 315 456	Communication
9	A-1712pct	PCT/US01/47267	Int'l. Search Report
9	TMi-1815	78/065,400	Notice of Acceptance
9	8382.04qpc	9 7907722.9	No Filing of Opposition letter

Rec'd Date	Docket	Serial Number	Correspondence
9	A-1486con	10/155,722	Office Action
9	A-1442cip	10/289,708	Notice of Recordation
9	TM-1812	76/331,138	Notice of Publication
9	8388.39p	09/015,444 - 5,980,465	Maintenance Fee Reminder
9	A-1676	10/035,920 - 6,571,986	Original Patent
10	A-1640	09/887,409	Refund Request
10	A-1694pct	PCT/US02/41018	Int'l. Search Report
11	A-1804ep	01 971109.2	Renewal fees
12	A-1597con2	10/262,420	Updated Filing Receipt
12	A-1656	09/616,802	Issue Notification
12	A-1529	09/561,480	Issue Notification
12	TMI-1726	76/047,473	Notice of Abandonment
12	TMI-1710	76/209,050	Notice of Abandonment
13	TMI-1867	76/431,697	Notice of Allowance
16	TMI-1691	76/155,404	Notice of Approval of Extension
16	A-1657con	10/396,655	Filing Receipt
16	A-1495div	10/233,992	OA
16	A-1624ep	00916080.5	Communication
16	A-1905p	60/475,728	Post Card
16	A-1766con	10/452,889	Post Card
16	TMI-1703	2,725,164	Original Registration
16	A-1663	09/651,253	Issue Notification

Docket: A-1663

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: /
Robert Johnson et al. /
US Serial No.: 09/855,403 / Group Art: 3761
Filed: 5/15/2001 / Examiner: Glenn K. Dawson
Title: AEROSOL ENHANCEMENT /
DEVICE /

CERTIFICATE OF FACSIMILE TRANSMITTAL

I hereby certify that this correspondence is being facsimile transmitted to facsimile telephone number 703-872-9302 on Friday, September 19, 2003.

Date: 9/19/03Signed: Donald E. Stout

Donald E. Stout, Reg. No. 34,493

RESPONSE TO OFFICE ACTION DATED MAY 16, 2003

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This submittal is responsive to the office action allegedly mailed on May 16, 2003, in connection with the subject application. As is explained in the accompanying petition, the undersigned never received this office action, and became aware of its issuance only after the subject application came up in the docketing system of the undersigned for six month follow-up. Applicants gratefully acknowledge Examiner Dawson's immediate and courteous response in providing another copy of the office action by facsimile. No extension fees are deemed necessary, given the accompanying petition and office practice in connection with non-receipt of office actions.

The office action of May 16, 2003 indicates the submittal of March 6, 2003 to be non-responsive because "the response does not include details as to what features of claims 24 and 28 make the claims allowable over the applied prior art." Claim 24 is an independent claim which recites an aerosol enhancement device comprising a mouthpiece, a spacer member fluidly attached to the mouthpiece via a mouthpiece port, wherein the spacer member has an outer body which defines an interior volume, an inlet port disposed in the spacer member for receiving a medicated aerosol from an exterior source into the interior volume, and an adapter associated with the inlet port for receiving

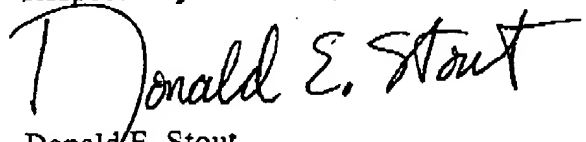
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a medicated aerosol, wherein the adapter comprises a universal fitting which is capable of attaching the spacer member to either a nebulizer or a metered dose inhaler (MDI), and comprises a first rigid connector end and a second flexible connector end. This claim is patentable because none of the prior art references of record disclose this unique combination of elements. In particular, and by way of example only, none of the prior art references disclose the unique adapter having a universal fitting, which comprises a first rigid connector end and a second flexible connector end.

Claim 28 is similar to claim 24, except that claim 28 recites only the universal adaptive fitting portion of the combination recited in claim 24. The claim is patentable over the prior art of record because none of the prior art references disclose or suggest such a fitting for attaching an inlet port for receiving a medicated aerosol on a spacer member of an aerosol enhancement device to a source of medicated aerosol, which comprises a first rigid connector end and a second flexible connector end.

In view of the foregoing comments, the amendment of March 6, 2003 is believed to be fully responsive to the office action of November 6, 2002. Thus, an early notification of allowance is earnestly solicited. The Examiner is requested to contact the undersigned at the number below, should any further questions or issues need to be resolved.

Respectfully submitted,



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